

APR 28 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-54
)	
GAF BROADCASTING COMPANY, INC.)	File No. BRH-910201WL
)	
For Renewal of License of Station)	
WNCN(FM) (104.3 MHz), New York,)	
New York)	
)	
CLASS ENTERTAINMENT AND)	
COMMUNICATIONS, L.P.)	File No. BPH-910430ME
)	
THE FIDELIO GROUP, INC.)	File No. BPH-910502MQ
)	
For a Construction Permit for a)	
New FM Station on 104.3 MHz at)	
New York, New York)	

To: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO
PETITION FOR RECONSIDERATION

1. On April 14, 1993, Listeners' Guild, Inc. ("Guild") filed a Petition for Reconsideration ("Petition") of the Hearing Designation Order, 8 FCC Rcd 1742 (1993) ("HDO") in the above-captioned proceeding. The Mass Media Bureau urges the Commission to deny the Petition.¹

2. Guild complains that the HDO should not have "bifurcated" the hearing by referring all pleadings, allegations, and agreements relating to WNCN(FM)'s EEO program and practices

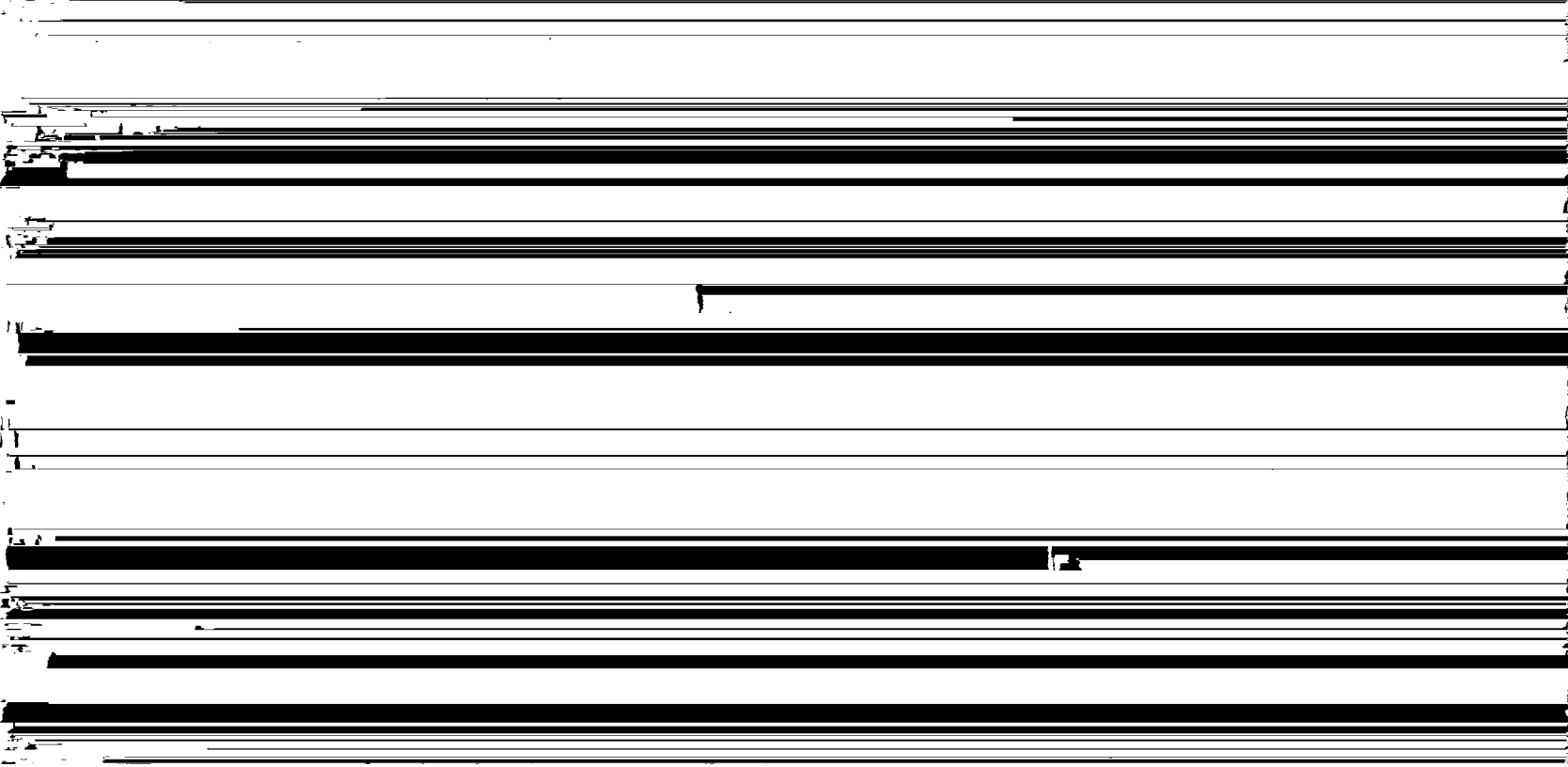
¹ Guild directed its Petition to the Chief, Audio Services Division, Mass Media Bureau. Pursuant to § 1.106(a)(1) of the Commission's Rules, on April 23, 1993, the Bureau referred the Petition to the Commission for appropriate action.

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to the EEO Branch for Commission disposition. Guild also faults the HDO for ruling adversely on its claim that GAF Broadcasting Company, Inc. ("GAF"), licensee of WNCN(FM), abused the Commission's processes by using a name for its listeners' club that is confusingly similar to the Guild's own name. Finally, Guild argues that it should have been named a party to the hearing.

3. The Bureau submits that the HDO properly referred matters relating WNCN(FM)'s EEO program and practices to the EEO Branch and properly rejected Guild's claim that GAF abused the Commission's processes. Consequently, there remains no basis for overturning the HDO's implicit denial of Guild's request to participate in this proceeding.

4. Guild argues that by not designating EEO-related issues



contrary, it constitutes an affirmative acknowledgement that there has been no judgment as yet.

5. The Bureau further submits that the HDO's treatment of Guild's abuse of process claim against GAF was appropriate and justified. Regardless of how Guild attempts to characterize it, the dispute between Guild and GAF over the name of WNCN(FM)'s listeners' organization and over a confidentiality agreement is a private matter which is outside the scope of the Commission's expertise or interest to adjudicate. Thus, reconsideration of this matter also is not warranted.

6. There is no basis for reconsidering the HDO's implicit denial of Guild's participation in this proceeding. Guild's participation is premised on the specification of issues against GAF which Guild raised in a Petition to Deny the WNCN(FM) renewal application. Because the matters raised in the Petition to Deny were either denied or referred to the EEO Branch, there is no justification for making Guild a party in this proceeding.²

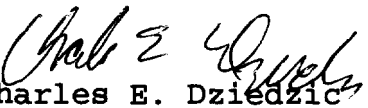
7. Finally, to the extent that Guild's request for reconsideration is considered an application for review of the HDO, it must be dismissed. Section 1.115(e)(3) of the Commission's Rules states that applications for review of hearing

² The Bureau notes that on April 19, 1993, Guild availed itself of § 1.223 of the Commission's Rules by filing a request to intervene.


designation orders shall be deferred until applications for review of the final Review Board decision in the case are filed, unless the Presiding Judge certifies such an application for review to the Commission. A request for certification must be filed within five days after release of the hearing designation order. Because the HDO was released on March 15, 1993, more than a month ago, Guild's initial opportunity to seek review of the HDO has long passed.

8. Based on the foregoing, the Petition for Reconsideration, filed April 14, 1993, by Listeners' Guild, Inc., should be dismissed.

Respectfully submitted,
Roy J. Stewart
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CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch,
Mass Media Bureau, certify that I have, on this 28th day of April
1993, sent by First Class mail, U.S. Government frank, copies of
the foregoing "Mass Media Bureau's Opposition to Petition for
Reconsideration" to:

Harry F. Cole, Esq.
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